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No. 1474

In the
Supreme Court of the United States
OCTOBER TERM, 1969

BENJAMIN H. ADAMOWSKI, et al.,
Petitioners,

vs.

GEORGE W. JAYNE,
Respondent.

REPLY TO ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

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The following misstatements in respondent's Answer, demand correction for knowledge of the issue:

1. "The Supreme Court of the United States has no jurisdiction herein, as the case was decided by the Appellate Court of Illinois on an independent state ground • • •." (Page 1, Answer)

Correction: The federal question arose in this case when the Illinois Appellate Court, *refused* to decide the case at all. As a matter of right these appellants were entitled to litigate this state question. The Appellate Court of Illinois, abetted by the Illinois Supreme Court in its denial of leave to appeal, closed its doors on these litigants thereby denying them due process of law, enjoyed by all other litigants in Illinois.

2. These litigants are called "complete strangers to the Record." (Page 1, Answer.)

Correction. Benjamin H. Adamowski et al., are the single family homeowners damaged by the proposed horse stable. "et al.", includes Ruth Gordon, (R.292) Beulah Cizek, (R.279), Esther Swanson, (R.300) and Karen Koch, (R.306) homeowners, all of whom testified against the respondent. Each proved the damage to her home.

3. "No opinion was written by either court." (Page 2, Answer)

Correction. Both courts refused jurisdiction. This is the touchstone of the federal question. A total denial of due process.

4. "The Supreme Court of the United States will not review a state court decision resting on an adequate and independent non-federal ground . . ."

Correction. There is no "state court decision." The Courts of Illinois refused these litigants the right to be heard. This is exactly what happened in *Hansberry* v. *Lee*, 311 US 32, 40, when the Appellate and Supreme Courts of Illinois, refused those petitioners the right to litigate *their* question. It "is not that due process which the Fifth and Fourteenth Amendments require." (*id.*, at 41). Again, the Appellate and Supreme Courts of Illinois denied *Griffin* his right to due process, when it denied him a transcript of his trial, which he could not buy. The "unfolding content of 'due process'" (*Griffin* v. *Illinois*, 351 US at 21) forbids the establishment of "a general policy of allowing [civil] appeals", then creating a silent barrier "to the exercise of this opportunity." (*id.*, at 24)

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5. "Where the highest court of a state delivers no opinion and it appears that the judgment might have rested on a non-federal ground . . ." (Page 3, Answer)

Correction. "the highest court" and the next lower "highest court", didn't deliver an opinion. They refused jurisdiction. They refused a hearing. They denied due process. "The judgment" was never made. The right to have a "judgment" (judicial order) was denied. There was no hearing and no judgment. Everyone else in Illinois gets all of them as a matter of right. The denial of that right was a denial of due process within the contemplation of the federal Constitution.

I.

The full thrust of the legal argument in the Answer is that this court has no jurisdiction to review this case, because the basic trial involved a state issue. This is not only digressive nonsense, for the issue here is the denial of procedural due process; and every case cited by the respondent (pages 2 and 3) asserts this court's jurisdiction to determine due process in the review of state administration of its own rules of appellate procedure, and their application. Cf. *Henry* v. *Mississippi*, 379 US at 447.

Respectfully submitted,

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